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## THE CENSORS' WORK IN THE ADMINISTRATION OF BUILDING PROJECTS IN REPUBLICAN ROME\*

The censors exercised one of the Republic's most important and prestigious offices. Its origins went back to the second half of the fifth century.<sup>1</sup> Although the reasons for its foundation were not connected with *cura urbis*, later *cura urbis* became one of the censors' chief responsibilities.<sup>2</sup>

Polybius describes the duties of the censors as follows:

Polyb. 6,17,2: πολλῶν γὰρ ἔργων ὄντων τῶν ἐκδιδομένων ὑπὸ τῶν  
τιμητῶν διὰ πάσης Ἰταλίας εἰς τὰς ἐπισκευὰς καὶ κατασκευὰς  
τῶν δημοσίων...

According to Polybius, not only did the censors have the right to conclude contracts for the construction and restoration of public buildings, but they often used this right as well.

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\* Translated by Teresa Bałuk Ulewicz

<sup>1</sup> A.E. ASTIN, *Cato the Censor*, Oxford 1978, p. 78; A. TARWACKA, 'Censoria potestas' Oktawiana Augusta, «Zeszyty Prawnicze» 11.1/2011, p. 373; EADEM, *Prawne aspekty urzędy cenzora w starożytnym Rzymie*, Warszawa 2012, p. 25; EADEM, *Jak się zemścić na cenzorach? Rozgrywki polityczne a zakres odpowiedzialności karnej strażników moralności*, [in:] *Prawo karne i polityka w państwie rzymskim*, ed. K. AMIELAŃCZYK, A. DĘBIŃSKI, D. SŁAPEK, Lublin 2015, p. 189.

<sup>2</sup> Liv. 4,8; Research on the censors' work in *cura urbis* has been conducted in Poland and other countries. Recently this issue has been widely discussed by A. Tarwacka. See A. TARWACKA, *O początkach prawa i wszystkich urzędów oraz o następstwie prawników. Tekst-tłumaczenie-komentarz*, «Zeszyty Prawnicze» 3.1/2003, p. 205; EADEM, *Prawne aspekty...*, p. 26-33.

Livy was more general on the censors' *cura urbis* activities, writing that they had jurisdiction over private and public places in Rome (*ius publicorum privatorumque locorum*).<sup>3</sup>

A passage in Cicero's *De legibus* on his vision of the perfect municipal system tells us just how important those duties listed by the two historians must have been in the life of the city, and that they were to be carried out by the censors:

Cic., *De leg.* 3,3,7: *Censoris ... urbis templa vias aquas ... tuento ...*

In the part of Book Three where he presents his idea of the best way to allocate duties to Rome's magistrates, the censors get the supervision of the temples, streets and waterworks.

Evidence of the censors' activities in building and restoration projects is provided by the *locationes*, the contracts they concluded on behalf of the state with private sub-contractors (*redemptores*). These contracts were for specific public works and for the collection of public revenues.<sup>4</sup>

Front., *De aq.* 96: *Tutelam autem singularum aquarum locari solitam invenio positamque redemptoribus ... eorumque operum probandorum curam fuisse penes censores aliquando et aediles, interdum etiam quaestoribus eam provinciam obvenisse, ut apparet ex S.C. quod factum est C. Licinio et Q. Fabio cos.*

Frontinus explains that usually the care of particular aqueducts was sub-contracted to holders of *locationes*.<sup>5</sup> The duty of supervising their work was sometimes the responsibility of the censors and aediles, and

<sup>3</sup> Liv. 4,8.

<sup>4</sup> Polyb. 6,17,2-4. More about public contracts see P.A. BRUNT, *Free Labour and Public Works at Rome*, «JRS» 70/1980, p. 88-92; A. MATEO, 'Manceps', 'redemptor', 'publicanus'. *Contribución al estudio de los contratistas públicos en Roma*, Cantabria 1999, p. 33-44; A. TORRENT, 'La lex locationis' de las tres societates publicanorum concurrentes sub hasta en el 215 A.C., «SDHI» 80/2014, p. 76.

<sup>5</sup> Liv. 39,44,5; 39,44,7; 42,3,7. For types of *locationes censoriae* see A. TRISCIUOGGIO, 'Sarta tecta, ultrotributa, opus publicum faciendum locare'. *Sugli appalti relativi alle opere pubbliche nell'età repubblicana e augustea*, Napoli 1998, p. 7-94. For a recent Polish publication on the subject, see A. TARWACKA, *Prawne aspekty...*, p. 272-275.

sometimes even of quaestors, as Frontinus notes referring to the Senate resolution of 116 BC.<sup>6</sup>

In their edicts the censors defined the rules and conditions on which the contracts were to be concluded with *redemptores*.<sup>7</sup> Generally, the purpose of most of these contracts was either the repair of existing buildings or the construction of new ones.<sup>8</sup> The duty of the censors was to organise and coordinate building projects and see that the provisions of the contracts were carried out. If the censor who concluded the contract was satisfied with the work,<sup>9</sup> he drew up an official deed of acceptance, called an *exactio* in the case of *sarta tecta*, or a *probatio* for *opera publica*.<sup>10</sup> His acceptance was a technical verification of the work contracted, resulting in the issue of a decision to accept or reject the work.<sup>11</sup>

The Senate supervised construction and restoration and it also took decisions on the distribution of funds for this purpose.<sup>12</sup> The censors' duties were to make the decisions which sub-contractors to hire for particular jobs, define the conditions of the contracts and *probationes*,

<sup>6</sup> T.R.S. BROUGHTON, *The Magistrates of the Roman Republic*, I, New York 1951, p. 530; O. KERN, s.v. *Q. Fabius Maximus Eburnus*, «RE» 6/1907, col. 1796-1797.

<sup>7</sup> A. TARWACKA, 'Censores edixerunt'. Przedmiot i cele edyktów cenzorskich, «CPH» 63.1/2011, p. 193, 213, 215; J.M. RAINER, *Public Building Contracts in the Roman Republic*, [in:] *Obligations in Roman Law. Past, Present, and Future*, ed. T.A.J. MCGINN, Ann Arbor 2012, p. 177.

<sup>8</sup> *Tab. Her.* 2. 46; Cic., *In Verr.* 2,1,130; Front., *De aq.* 96,1; E. WEISS, *Der Rechtsschutz der römischen Wasserleitungen*, «ZSS» 45/1925, p. 92; A.E. ASTIN, *Cato...*, p. 85; P.A. BRUN, *op. cit.*, p. 85, 87; A. TRISCIUOGGIO, *op. cit.*, p. 3-4.

<sup>9</sup> Liv. 45,15: *ut ex instituto ad sarta tecta exigenda et ad opera, quae locassent, probanda anni et sex mensum tempus prorogaretur ...*

<sup>10</sup> S.D. MARTIN, *A Reconsideration of 'probatio operis'*, «ZSS» 103/1986, p. 323-324; F. CANCELLI, *Studi sui censori e sull'arbitratus della 'lex contractus'. Esemplicate nel 'De agri cultura' di Catone*, Milano 1960, p. 99-101 define both of these terms.

<sup>11</sup> For more on *probatio* see R. SAMTER, 'Probatio operis', «ZSS» 26/1905, p. 125-144; P.A. BRUN, *op. cit.*, p. 85; A. TRISCIUOGGIO, *op. cit.*, p. 109; V. PONTE, *La regulación de las vías públicas en el seno del Derecho Administrativo Romano*, [in:] (*Hacia Derecho Administrativo y Fiscal Romano*, ed. A.F. DE BUJÁN, G.G. KRAEMER, B.M. OSUNA, Madrid 2011, p. 372.

<sup>12</sup> J.M. RAINER, *op. cit.*, p. 185, 186.

and manage the funds allocated by the Senate for this purpose.<sup>13</sup> The work of Tiberius Sempronius Gracchus, as described by Livy, illustrates the procedure:

Liv. 44,16,9-11: *ad opera publica facienda cum eis dimidium ex vectigalibus eius anni attributum ex senatus consulto a quaestoribus esset, Ti. Sempronius ex ea pecunia, quae ipsi attributa erat, aedes P. Africani pone Veteres ad Vortumni signum lanienasque et tabernas coniunctas in publicum emit basilicamque faciendam curavit, quae postea Sempronia appellata est.*

Gracchus received half of the annual state revenue for *opera publica* under the *senatus consultum* of 169 BC, the same year he took office.<sup>14</sup> With this money he bought Publius Africanus' house with the adjacent butchers' shops and taverns and then, most probably after having demolished those buildings, he concluded a contract for the building of the *Basilica Sempronia*.<sup>15</sup>

Usually the censors themselves petitioned the Senate for funds for repair and maintenance, and for new building projects.

Liv. 40,46,16: *ensoribus deinde postulantibus, ut pecuniae summa sibi, qua in opera publica uterentur, <attribueretur,> uectigal annuum decretum est.*

In 179 BC M. Aemilius Lepidus and M. Fulvius Nobilior submitted a petition of this kind. In spite of opposition and strong political rivalry<sup>16</sup> they accomplished an ambitious urban development plan. They received substantial funds for the purpose, and one year's revenue was assigned to them,<sup>17</sup> as Livy reports.

<sup>13</sup> C. KUNDEREWICZ, *Prawo budowlane starożytnego Rzymu (II)*, «CPH» 31.1/1979, p. 57 [= *Studia z rzymskiego prawa administracyjnego*, Łódź 1991, p. 119].

<sup>14</sup> T.R.S. BROUGHTON, *op. cit.*, p. 423-424.

<sup>15</sup> R.V. CRAM, *The Roman Censors*, «HSCP» 51/1940, p. 93; C. HOLLERAN, *Shopping in the Ancient Rome. The Retail Trade in the Late Republic and the Principate*, Oxford 2012, p.106.

<sup>16</sup> Liv. 40,46,3-7.

<sup>17</sup> Liv. 40,46,16; Varr., *De ling. lat.* 6,4; R.V. CRAM, *op. cit.*, p. 92; T.R.S. BROUGHTON, *op. cit.*, p. 392; C. NICOLET, *Recherches sur la fiscalité directe sous la république romaine*, Bonn 1976, p. 59.

Appius Claudius, who was a censor in 312 BC,<sup>18</sup> embarked on an ambitious building project:

Liv. 9,29: *Et censura clara eo anno Ap. Claudi et C. Plauti fuit; memoriae tamen felicioris ad posteros nomen Appi, quod uiam muniuit et aquam in urbem duxit ...*

Livy reports that Appius Claudius provided Rome with its first aqueduct and what was then its longest road, both named after him, as the *Aqua Appia* and the *Via Appia*.<sup>19</sup>

The right to enter *locationes* with private contractors enabled censors to supervise the condition of public buildings, temples and roads. Livy provides the following examples:

Liv. 41,27,1,5-8: *censores eo anno creati Q. Fuluius Flaccus et A. Postumius Albinus legerunt senatum. censores uias sternendas silice in urbe, glareae extra urbem substruendas marginandasque primi omnium locauerunt, pontesque multis locis faciendos; et scaenam aedilibus praetoribusque praebendam; et carceres in circo, et oua ad no<tas> curriculis numerand<is> .... dam, et metas trans. . . . et caueas ferreas, pe<r quas> intrmitterentur. . . . feriis in monte Albano consulibus, et cliuom Capitolinum silice sternendum curauerunt, et porticum ab aede Saturni in Capitolium ad senaculum, ac super id curiam. et extra portam Trigeminam emporium lapide strauerunt stipitibusque saepserunt, et porticum Aemiliam reficiendam curarunt, gradibusque ascensum ab Tiberi in emporium fecerunt. et intra eandem portam in Auentinum porticum silice strauerunt, et~ eo publico ab aede Ueneris fecerunt.*

The account of Fulvius Flaccus and A. Postumius Albinus' term in office shows the variety of tasks these censors carried out in *cura urbis*,

<sup>18</sup> T.R.S.BROUGHTON, *op. cit.*, p. 160.

<sup>19</sup> Front., *De aq.* 5,1: *M. Valerio Maximo P. Decio Mure consulibus, anno post initium Samnitici belli trecesimo aqua Appia in urbem iducta est ab Appio Claudio Crasso censore, cui postea Caeco fuit cognomen, qui et Viam Appiam a Porta Capena usque ad urbem Capuam muniendam curauit.* See also M. HUMM, *Appius Claudius Caecus et la construction de la via Appia*, «MEFR» 108.2/1996, p. 735.

<sup>20</sup> and in particular the different types of public works they could sub-contract. Livy writes that one of the important duties of the censors was the management of roadworks, especially in the busier streets, those which led up to temples or the Forum. Their work to ensure mobility around the City can be seen in their decision to pave the streets going down to the Tiber and those that went up to the Forum, and to lay out new pavements and put up bridges where necessary. They had the Capitoline Hill paved and a portico built from the Temple of Saturn to the Senate. The censors also helped to create new facilities and ensure the safety of spectators in the *Circus Maximus*, where they had iron doors installed on the cages through which wild animals were let out into the arena.

The censors were active in suburban areas as well, developing the road network, continuing on from Appius Claudius Caecus' activities in 312 BC.<sup>21</sup> This is shown in the following passage from Livy's *Perochae*:

Liv., *Per.* 20: C. Flaminius censor uiam Flaminiam muniit et circum Flaminium exstruxit.

In 220 BC Gaius Flaminius started a building scheme for one of the most important roads leading north, the *Via Flaminia*, which ran from Rome to Ariminum (Rimini).<sup>22</sup> He also erected a circus, the *Circus Flaminius*.<sup>23</sup> Censors were responsible for other road-building projects, such as the *Via Clodia* connecting Rome with *Forum Clodii*; this project

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<sup>20</sup> T.R.S.BROUGHTON, *op. cit.*, p. 404.

<sup>21</sup> R. LAURENCE, *The Roads of Roman Italy: Mobility and Cultural Change*, London 1999, p. 15, 22, 30; R.A. STACCIOLI, *The Roads of the Romans*, Los Angeles 2003, p. 60-61, 74, 76; H.E. HERZIG, *Probleme des römischen Straßenwesens: Untersuchungen zu Geschichte und Recht*, «ANRW» 2.1/1974, p. 595-596. Some scholars deny that the censors had the right to build roads: see G. RADKE, 'Viae publicae Romanae', «RE», Suppl. 13/1973, col. 1433-1438, who claims that only the *Via Appia* was built by a censor.

<sup>22</sup> T.R.S.BROUGHTON, *op. cit.*, p. 235-236.

<sup>23</sup> D.E. STRONG, *The Administration of Republic Building in Rome during the Latin Republic and Early Empire*, «BICS» 15/1968, p. 97; A. ROSSET, *Starożytne drogi i mosty*, Warszawa 1970, p. 94; R.A. STACCIOLI, *op. cit.*, p. 68; D. PARRY, *Engineering in Ancient World*, Charleston 2005, polish transl. S. RZEPKA, *Niezwykła technika starożytności*, Warszawa 2006, p. 122.

was launched by Gaius Claudius Centho in 225 BC;<sup>24</sup> and the *Via Cassia* from Rome to Etruria,<sup>25</sup> which was probably started in 156 BC by Gaius Cassius Longinus.<sup>26</sup> Just two years later another new road, the *Via Valeria*, was opened thanks to the work of censor M. Valerius Messala.<sup>27</sup> Another important road, the long-distance and strategically significant *Via Aemilia Scauri*, was started by Marcus Aemilius Scaurus, censor in 109 BC. It ran across the Apennines, as an extension of the *Via Aurelia*, which had been built over a century earlier by censor Gaius Aurelius Cotta,<sup>28</sup> connecting it with the *Via Postumia*.<sup>29</sup>

Another passage in Livy, on M. Porcius Cato and L. Valerius Flaccus, censors in 184 BC, tells us that the censors held a very broad range of administrative powers.<sup>30</sup>

Liv. 39,44,4-7: *aquam publicam omnem in privatum aedificium aut agrum fluentem ademerunt; et quae in loca publica inaedificata immolitate privati habebant, intra dies triginta demoliti sunt. Opera deinde facienda ex decreta in eam rem pecunia, lacus sternendos lapide, detergendasque, qua opus esset, cloacas, in Aventino et in aliis partibus, qua nondum erant, faciendas locaverunt. Et separatim Flaccus molem ad Neptunias aquas, ut iter populo esset, et viam per Formianum montem, Cato atria duo, Maenium et Titium, in lautumiis, et quattuor tabernas in publicum emit basilicamque ibi fecit, quae Porcia appellata est.*

Three issues are addressed in this text. The first and second concern the citizens' public water rights and the right to erect private structures

<sup>24</sup> T.R.S.BROUGHTON, *op. cit.*, p. 231; A. ROSSET, *op. cit.*, p. 97.

<sup>25</sup> R.A. STACCIOLI, *op. cit.*, p. 74.

<sup>26</sup> Longinus also planned to build a theatre, but P. Cornelius Nasica prevented him from doing so. See Liv., *Per.* 48: *Cum locatum a censoribus theatrum exstrueretur, P. Cornelio Nasica auctore tamquam inutile et nociturum publicis moribus ex S. C. destructum est populusque aliquamdiu stans ludos spectauit.* See also Plin., *Nat. hist.* 34,30; T.R.S.BROUGHTON, *op. cit.*, p. 449.

<sup>27</sup> T.R.S.BROUGHTON, *op. cit.*, p. 449; A. ROSSET, *op. cit.*, p. 97.

<sup>28</sup> T.R.S.BROUGHTON, *op. cit.*, p. 219; A. ROSSET, *op. cit.*, p. 96-97.

<sup>29</sup> ILS 5824; Strab. 5,1,11; T.R.S.BROUGHTON, *op. cit.*, p. 545; R.A. STACCIOLI, *op. cit.*, p. 68.

<sup>30</sup> T.R.S.BROUGHTON, *op. cit.*, p. 374-375.

in *loca publica*. The censors were responsible for the management and control of matters pertaining to these issues. The third issue concerns the censors' work for building projects.

Livy reports that during their term of office Cato and Valerius Flaccus, who had enough public funds at their disposal, concluded numerous contracts for the construction and repair of public buildings in the City. One of their water projects was for a stone cladding put on a water tank, another was for the construction and maintenance of a network of drains and sewers. Moreover, Flaccus Flaccus built a mole at Neptunia (near Taranto), with a footpath along it. Cato erected the first basilica in Rome<sup>31</sup> in spite of opposition from the Senate. It was named the *Basilica Porcia* after him,<sup>32</sup> and was built on a property he had bought in the north-west part of the Forum. He must have had the two houses and four taverns on it demolished before the basilica was built on the site.<sup>33</sup>

The variety of structures censors built and were responsible for shows the broad range of powers pertaining to their magistracy in *ius publicorum privatorumque locorum*. Their administrative and legal powers were complemented by a prerogative mentioned by Livy to cut off the public water supply to private buildings and fields and to demolish structures built by an individual in a public place.<sup>34</sup>

The censors' right to order an individual to demolish a building he had erected on public land comes up in another passage of Livy,<sup>35</sup> work, where the Rutilius case is cited.<sup>36</sup>

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<sup>31</sup> J.M. RAINER, *op. cit.*, p. 175.

<sup>32</sup> Cat. Mai. 19,2; Ascon., *in Mil.* 34; A.E. ASTIN, *op. cit.*, p. 84.

<sup>33</sup> R.V. CRAM, *op. cit.*, p. 92; C. HOLLERAN, *op. cit.*, p. 106.

<sup>34</sup> A.E. ASTIN, *op. cit.*, p. 83.

<sup>35</sup> A. Tarwacka discusses this right. Referring to this passage, she writes that censors could order the demolition of a structure (or part of it, e.g. a wall) built in a public place. They could also order the offender to make a pledge (*pignoris capio*) or impose a fine on him. This is also confirmed by Valerius Maximus' report (Val. Max. 6,5,3) who quotes the same story but has different names for its protagonists. See A. TARWACKA, *The Roman Censors as Protectors of Public Places*, «Diritto@Storia» 12/2014, por. <http://www.dirittoestoria.it/12/tradizione-romana/Tarwacka-Roman-Censors-Protectors-Public-Places.htm>

<sup>36</sup> T.R.S. BROUGHTON, *op. cit.*, p. 425.



Liv. 43,16: *Saepe id querendo veteres publicani cum impetrare nequis-  
sent ab senatu, ut modum potestati censoriae inponerent, tandem  
tribunum plebis P. Rutilium, ex rei privatae contentione iratum  
censoribus, patronum causae nanci sunt. Clientem [eius] liber-  
tinum parietem in Sacra via adversus aedes publicas demoliri  
iusserant, quod publico inaedificatus esset. Appellati a privato  
tribuni. cum praeter Rutilium nemo intercederet, censores ad pig-  
nera capienda miserunt multamque pro contione privato dixerunt.*

The incident occurred in 169 BC, when Tiberius Gracchus and Clau-  
dius Pulcher were in office.<sup>37</sup> They soon became unpopular with the  
*equites* when they conducted a stringent review of the *centuriae*, and  
even more after an edict which excluded previous publicans (tax col-  
lectors) from bidding in new auctions for the right to farm taxes. The  
*equites* expressed their discontent in ineffective attempts to make the  
Senate define the bounds to censorial powers. They gladly accepted the  
assistance offered them by P. Rutilius, tribune of the plebs. Rutilius was  
looking for an opportunity to take his revenge on the censors for a de-  
cision they had issued against him.<sup>38</sup> They had ordered him to demolish  
a wall that his freedman had built on the *Via Sacra* in front of public  
buildings. Since no other tribunes apart from Rutilius intervened on  
his behalf, Gracchus and Pulcher ruled a *pignoris capio* (the taking of  
a pledge) and imposed a fine on him.<sup>39</sup>

Censors were also responsible for the construction and care of the  
waterworks system, and they looked after the public water supply, as  
Plutarch records in *The Life of Cato the Elder*:

Plut., *Cat. Mai.* 19,1: ἀποσκότων μὲν ὄχετους, οἷς τὸ παραρρέον  
δημόσιον ὕδωρ ὑπολαμβάνοντες ἀπῆγον εἰς οἰκίας ἰδίας καὶ  
κῆπους.

Plutarch is full of admiration for the censorship of Cato, who man-  
aged to implement his policy in spite of heavy opposition. He was not

<sup>37</sup> T.R.S.BROUGHTON, *op. cit.*, p. 423-424.

<sup>38</sup> T.R.S.BROUGHTON, *op. cit.*, p. 425; E. REIGADAS LAVANDERO, *Censura y 'res publica': aportación constitucional y protagonismo político*, Madrid 2000, p. 336-337.

<sup>39</sup> For more on the Rutilius case see A. TARWACKA, *Jak się zemścił...*, p. 194-196.

discouraged by the criticism that erupted when he cut off the water supply to certain private premises and ordered the demolition of private buildings put up on public land.<sup>40</sup>

But what does Plutarch mean by “cutting off the water supply”? There are two possibilities. First, it could mean cutting it off literally – disconnecting illegal water-pipes to stop the theft of public water. However, another explanation put forward by A. Tarwacka<sup>41</sup> seems more plausible. According to her Cato withdrew individuals’ water licences whenever he considered their use of the public water supply was excessive and wasteful. As a resolute opponent of surfeit and luxury, he cracked down on squanderers:

Front., *De aq.* 6,1-4: *Post annos quadraginta quam Appia perducta est, anno ab urbe condita quadringentesimo octogesimo primo, M'. Curius Dentatus, qui censuram cum L. Papirio Cursore gessit, Anionis qui nunc vetus dicitur aquam perducendam in urbem ex manubiis de Pyrrho captis locavit, Spurio Carvillo Lucio Papirio consulibus iterum. Post biennium deinde actum est in senatu de consummando eius aquae opere, referente ... norumi ... praetore. Tum ex senatus consulto duumviri aquae perducendae creati sunt Curius, qui eam locaverat et Fulvius Flaccus. Curius intra quintum diem quam erat duumvirum creatus decessit; gloria perductae pertinuit ad Fulvium.*

According to Frontinus, the projects for the first two aqueducts supplying Rome with water were pioneered by censors. One was the *Aqua Appia*,<sup>42</sup> and the other the *Anio Vetus*, which was initiated by Manius Curius Dentatus in 272 BC.<sup>43</sup> The scheme was continued by Fulvius

<sup>40</sup> A.E. ASTIN, *op. cit.*, p. 83-84.

<sup>41</sup> According to A. TARWACKA, *Prawne aspekty...*, p. 295, evidence of this might be the anti-luxury provisions introduced in 184 BC by Cato and his colleague in the office, L. Valerius Flaccus. See also *ibid.*, p. 131; T.R.S. BROUGHTON, *op.cit.*, p. 374-375; A.E. ASTIN, *op. cit.* p. 78-103.

<sup>42</sup> Front., *De aq.* 5,1.

<sup>43</sup> Most probably Frontinus made a mistake in the names of the censors and consuls. It was not Papirius Cursor but Papirius Praetextatus who held the consulate together

Flaccus, who managed to complete it in spite of the death of the other magistrate appointed to oversee the project.<sup>44</sup>

The last aqueduct project initiated by censors was for the *Aqua Tepula*, which was built in 125 BC,<sup>45</sup> by Gneius Servilius Caepio and Lucius Cassius Longinus Ravilla.<sup>46</sup>

The sources lead to a conclusion that the censors' work in construction and restoration in Republican Rome was wide-ranging, which was undoubtedly connected with their powers to enter contracts commissioning public works. Since these projects were to be conducted on public land and also on private property, we need to determine how and from whom censors obtained the required construction sites. In other words, did they have the *ius publicandi*, i.e. the power to expropriate private properties?<sup>47</sup> Unfortunately, it is not easy to provide an answer to that question. First of all, the sources do not provide sufficient information, and are rather enigmatic where they do mention the matter. Modern scholars hold different views on this issue.<sup>48</sup>

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with Curius Dentatus and died in 272BC. See *Fasti Cap.* [in:] *Not. Scav.* 380/1925, line 10; R.V. CRAM, *op. cit.*, p. 85, foot. 2; T.R.S.BROUGHTON, *op. cit.*, p. 198.

<sup>44</sup> T.R.S.BROUGHTON, *op. cit.*, p. 198-199.

<sup>45</sup> R.V. CRAM, *op. cit.*, p. 96-97; T.R.S.BROUGHTON, *op. cit.*, p. 510.

<sup>46</sup> Front., *De aq.* 8,1; H.B. EVANS, *Water Distribution in Ancient Rome. The Evidence of Frontinus*, Michigan 1994, p. 96; R.M. TAYLOR, *Public Needs and Private Pleasures. Water Distribution, the Tiber River and the Urban Development of Ancient Rome*, Roma 2000, p. 165, footnote 105.

<sup>47</sup> The meaning of the word *publicatio* itself is problematic. See R.M. TAYLOR, *op. cit.*, p. 100, 101-102, who translates it simply as "making public." Unfortunately, as he admits, not much is known today about the scope of the *ius publicandi*. He claims that we can be sure only that it was the individual right to purchase land for the state, which did not mean taking it by force. This power, as Taylor explains, involved a wide range of activities conducted by the magistrate responsible for the duty, from taking ownership of the private property for a fee or free of charge, to confiscation of the property. See also R. SCAEVOLA, 'Utilitas publica', II. *Elaborazione della giurisprudenza severiana*, Milano 2012, p. 78, footnote 5.

<sup>48</sup> W. KUNKEL, R. WITTMANN, *Staatsordnung und Staatspraxis der römischen Republik*, München 1995, p. 458 and S.C. PÉREZ GÓMEZ, *Regimen jurídico de las concesiones administrativas en el derecho romano*, Madrid 1996, p. 57-58, support the theory that censors could use the *ius publicandi*; G. RADKE, *op. cit.*, s.zp. 1433-1438 and V. PONTE

A passage in Livy (39,44,6) suggests that expropriation could have been one of the censors' powers. We are told that Cato purchased two atria and four taverns for the state and then built a temple on the site. Elsewhere Livy writes:

Liv. 40,51,6-7: *habuere et in promiscuo praeterea pecuniam: ex ea communiter locarunt aquam adducendam fornicesque faciendos. impedimento operi fuit M. Licinius Crassus, qui per fundum suum duci non est passus.*

This passage is a continuation of Livy's remarks on the construction projects carried out by Aemilius Lepidus and Fulvius Nobilior.<sup>49</sup> Apart from the funds assigned by the Senate for building projects, they wanted an additional sum of money for the construction of an aqueduct. However, they came up against a serious problem, obtaining the consent of M. Licinius Crassus, the owner of a private property.

This passage casts serious doubt on the censors' right to expropriate private land. First of all, as A. Tarwacka observes, it does not specify what Crassus' objection was exactly.<sup>50</sup> Did he refuse to sell the property, or perhaps as R. Taylor suggests,<sup>51</sup> to grant a right of way (an easement) to the state? The former explanation as the reason for the private owner's refusal would seriously undermine the hypothesis that the censors had the right to expropriate private property. Although expropriation entailed compensation for the individual concerned, it was done on the grounds of an administrative decision involving public necessity. If the private owner had the right to challenge the decision it would mean that the magistrates concerned did not exercise an incontestable power to perform the expropriation.

Frontinus writes the following on expropriation for the construction of public buildings:

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ARRÉBOLA, *La expropiación forzosa en la construcción de vías públicas romanas a la luz de la legislación municipal y colonial*, «RGDR» 10/2008, p. 12-17 are among others who disagree.

<sup>49</sup> Liv. 40,46,16.

<sup>50</sup> A. TARWACKA, *Prawne aspekty...*, p. 284.

<sup>51</sup> R.M. TAYLOR, *op. cit.*, p. 58-59, 104-105.

Front. *De aq.* 128: *multo magis cum maiores nostri admirabili aequitate ne ea quidem eripuerint privatis quae ad <com>modum publicum pertinebant, sed cum aquas perducerent, si difficilior possessor in parte vendunda fuerat, pro toto agro pecuniam intulerint et post determinata necessaria loca rursus eum agrum vendiderint, ut in suis finibus proprium ius <tam> res publica quam privati haberent.*

He starts by praising the ancestors, who were able to respect the individual's property rights even when an important public interest was involved. Public authorities refrained from the enforced buying up of private properties even for the implementation of a public goal. Whenever a proprietor made any difficulty in the sale of a portion, they paid for the whole field, and after marking off the needed part, again sold the land with the understanding that the public as well as private parties should, each one within his boundaries, have his own full rights.

Frontinus' account suggests that expropriation was practised in Republican Rome. Bearing in mind the *auctoritas* of the censors and the fact that they were the main initiators and coordinators of building projects in Rome under the Republic, one may suppose that this prerogative was probably one of their powers. This hypothesis may be supported by the fact that often a building could be erected only by means of expropriation. An excellent description of this mechanism is provided by Livy in his account of Crassus (Liv. 40,51,6-7).

Ulpian is another author who expresses an opinion on the magistrates' *ius publicandi*:

D. 43,8,2,21 (Ulp. 68 *ad ed.*): *... viae autem publicae solum publicum est, relictum ad directum certis finibus latitudinis ab eo, qui ius publicandi habuit ...*

In this passage Ulpian writes on road classification. Public roads were those on public land, and the magistrate holding the *ius publicandi* was responsible for the decision on their width and the course they would take.

Unfortunately none of the source texts gives an unambiguous account of this issue, which calls for more research and discussion.

We know that it was the censors and consuls who had the right to launch building projects for new roads.<sup>52</sup> Ulpian tells us that only those built on public land were public roads (*solum publicum*). This requirement meant that there was need to acquire the land from private owners.<sup>53</sup> Since censors and consuls were the only magistrates with the right to initiate a road-building scheme, we may assume that they also had the duty of acquiring the land on which the road was to be built. To do this they must have held the *ius publicandi*.<sup>54</sup>

Apart from the many other responsibilities the censors held under the Republic, they made a significant contribution to the advancement of *cura urbis*. History remembers them not only as the magistrates responsible for morality and the organisation of the census, but also for the building, repair and maintenance of various public buildings in and beyond the City, especially aqueducts, temples and roads.

#### THE CENSORS' WORK IN THE ADMINISTRATION OF BUILDING PROJECTS IN REPUBLICAN ROME

##### Summary

Alongside their many other duties in Republican Rome, the censors were responsible for *cura urbis*, which included the building, repair

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<sup>52</sup> A. TARWACKA, *Prawne aspekty...*, p. 286.

<sup>53</sup> D. 43,8,2,212 (Ulp. 68 ad ed.): *publicas vias dicimus, quas graeci basilikas, nostri praetorias, alii consulares vias appellant*. See also A. PALMA, *Le strade romane nelle dottrine giuridiche e gromatiche dell'età del principato*, «ANRW» I.14/1982, p. 874; L. MAGANZANI, *Gli 'agrimensores' nel processo privato romano*, Milano 1997, p. 241; C. CASTRONOVI, P. RESCIO, *La vita quotidiana in Basilicata nell'età romana*, Consiglio Regionale di Basilicata 2004, p. 47, por. [http://www.consiglio.basilicata.it/publicazioni/eta\\_romana/romana.asp](http://www.consiglio.basilicata.it/publicazioni/eta_romana/romana.asp), read the 21st of November 2009. Roads founded by consuls included the *Via Aemilia*, *Via Fulvia*, *Via Postumia* and the *Via Popilia*. See T.R.S. BROUGHTON, *op. cit.*, p. 367-368, 391-392, 461, 497-498; A. ROSSET, *op. cit.*, p. 97-98; R.A. STACCIOLI, *op. cit.*, p. 74-76,82.

<sup>54</sup> Isid., *Etym.* 15,16,5: *Omnis autem via aut publica est aut privata. Publica est auae in solo publico est, quo iter, actus populo patet*. See also H. HERZIG, *Probleme des römischen Straßenwesens: Untersuchungen zu Geschichte und Recht*, «ANRW» 2.1/1974, p. 614; R. KAMIŃSKA, *Ochrona dróg i rzek publicznych w prawie rzymskim okresu republiki i pryncypatu*, Warszawa 2010, p. 35.

and maintenance of public facilities. The censors were the founders of many of the Roman aqueducts, temples, and roads. They had the right to enter contracts for public works on behalf of the State with private companies, and they also held the *ius publicandi*, the right to expropriate land from private owners for these projects.

#### AKTYWNOŚĆ BUDOWLANA CENZORÓW W REPUBLICIE RZYMSKIEJ

##### Streszczenie

Obok wielu funkcji, jakie w okresie republiki sprawowali cenzorzy, należała do nich również *cura urbis*. W jej ramach prowadzili między innymi aktywną działalność budowlaną i remontową w Rzymie. Doprowadzili do powstania wielu akweduktów, świątyń oraz dróg publicznych. Zajmowanie się tą dziedziną administracji było możliwe dzięki posiadanemu przez nich prawu do zawierania w imieniu państwa *locationes* z prywatnymi wykonawcami (*redemptores*), czyli kontraktów na roboty publiczne (najczęściej budowę i remonty obiektów publicznych) oraz *ius publicandi*, czyli prawu do wywłaszczenia.

**Słowa kluczowe:** wywłaszczenie; *locationes censoriae*; roboty publiczne; budowlane publiczne.

**Keywords:** expropriation; *locationes censoriae*; public works; public buildings.

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